

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2322 of 1990
with
SPECIAL CIVIL APPLICATION NO 2450 OF 1990
with
SPECIAL CIVIL APPLICATION NO 2489 OF 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No @o
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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

DAMJIBHAI UKAABHAI PATEL, SINCE DECEASED BY HIS
HEIRS AND LEGAL REPRESENTATIVES & ORS.

Versus

COMPETENT AUTHORITY AND ADDL.COLLECTOR (ULC)

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioners

(in all matters)

Shri A.G. Uraizee, Assistant Government Pleader,

for the Respondents (in all matters)

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 06/09/96

ORAL JUDGEMENT

In all these three petitions the permission under sec. 21(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) has been cancelled only on the ground that the construction activity was not commenced within one year from the date of the order granting such permission stipulating a condition regarding commencement of the construction work within one year from the date of the order. Common questions of law and fact are found arising in all these three petitions. All these three petitions are ordered to be heard together. I have therefore thought it fit to dispose of all these three petitions by this common judgment of mine.

2. It is not necessary to set out in detail the facts giving rise to these petitions. It may be sufficient to note that in each case the permission under sec. 21(1) of the Act was granted on certain terms and conditions. One condition required the land-holder in each case to commence the construction work within one year from the date of the order. Such construction work was or could not be carried out within the stipulated time-limit of one year. Thereupon a show-cause notice came to be issued to the land-holder in each case for cancellation of the permission under sec.21(2) of the Act. After hearing the parties, the Competent Authority at Rajkot (respondent No.1 in each petition) cancelled the permission. Its copy is at Annexure A to each petition. Each aggrieved land-holder carried the matter in appeal before the Urban Land Tribunal at Ahmedabad (respondent No.2 in each petition). All the three appeals were heard together. By his common order passed in all the three appeals, respondent No.2 dismissed all of them. Its copy is at Annexure B to each petition. The aggrieved petitioners have thereupon approached this Court by means of their respective petitions under article. 226 of the Constitution of India for questioning the correctness of the orders of respondents Nos. 1 and 2 herein.

3. In its ruling in the case of Kanaiyalal Maneklal Sheth v. Competent Authority and Additional Collector (Ceiling, Rajkot and another reported in AIR 1994 Gujarat 130, this Court has held that no condition regarding commencement of the construction work within the stipulated time-limit of one year could be imposed while granting the permission under sec. 21(1) of the Act. If no condition could be imposed, the breach of such condition if imposed would not entail the consequence of its cancellation in view of the aforesaid ruling of this Court. The impugned orders at Annexures A and B to each petition cannot therefore be sustained in law in view of the aforesaid ruling of this Court.

4. It cannot be gainsaid that the holder of the permission under sec. 21(1) of the Act will be required to complete the construction work within the stipulated time-limit of 5 years. It is obvious that on receipt of the show-cause notice for cancellation of the permission under sec. 21(2) of the Act, the land-holder could not have done any construction work. In that view of the matter, the balance period for completion of the construction should not start from the date of the show-cause notice issued under sec. 21(2) of the Act in each case. It is obvious that the respective holder of the permission under sec. 21(1) of the Act will have to complete the construction work within the balance period from the date of receipt of the writ of this Court by respondent No. 1. It will be open to the land-holder in each case to produce a certified copy of this judgment before respondent No. 1 for starting the construction work. The commencement of the balance period will then begin from the date of production of a certified copy of this judgment before respondent No. 1.

5. In the result, all these three petitions are accepted. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) under sec. 21(2) of the Act at Annexure A to each petition as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad at Annexure B to each petition is quashed and set aside. It will be open to the petitioners in each petition to resume the construction work in terms of the directions contained in this judgment hereinabove. Rule is accordingly made absolute in each petition with no order as to costs.
